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May 20, 2011

The Honorable Max Baucus
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Dave Camp
Chairman
The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System--Update for Rate Year Beginning July 1, 2011 (RY 2012)*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), entitled "Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System--Update for Rate Year Beginning July 1, 2011 (RY 2012)" (RIN: 0938-AQ23). We received the rule on May 4, 2011. It was published in the *Federal Register* as a final rule on May 6, 2011. 76 Fed. Reg. 26,432.

The final rule updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPF) for discharges occurring

during the rate year beginning July 1, 2011, through September 30, 2012. The final rule also changes the IPF prospective payment system (PPS) payment rate update period to a rate year that coincides with a fiscal year. In addition, the rule implements policy changes affecting the IPF PPS teaching adjustment. It also rebases and revises the Rehabilitation, Psychiatric, and Long-Term Care market basket, and makes some clarifications and corrections to terminology and regulations text.

Enclosed is our assessment of CMS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that CMS complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Annie Lamb
Regulations Coordinator
Department of Health and
Human Services

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR MEDICARE & MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; INPATIENT PSYCHIATRIC FACILITIES
PROSPECTIVE PAYMENT SYSTEM--UPDATE FOR
RATE YEAR BEGINNING JULY 1, 2011 (RY 2012)"
(RIN: 0938-AQ23)

(i) Cost-benefit analysis

CMS estimated that the total impact of the changes in the final rule for estimated Rate Year (RY) 2012 payments compared to estimated RY 2011 payments would be a net increase of \$120 million, reflecting a \$130 million increase from the update to the payment rates and a \$10 million decrease due to the update to the outlier threshold amount to decrease outlier payments from approximately 2.2 percent in RY 2011 to 2.0 percent in RY 2012.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

CMS determined that the final rule would not have a significant economic impact on a substantial number of small entities. CMS also determined that the final rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

CMS determined that the final rule would not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of \$136 million.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On January 27, 2011, CMS published a notice of proposed rulemaking in the *Federal Register*: 76 Fed. Reg. 4,998. CMS received 12 public comments on the proposed rule from hospital associations and psychiatric hospitals and units. In the final rule, CMS summarized and responded to the comments. 76 Fed. Reg. 26,432.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain any information collection requirements under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is authorized by section 1886(s) of the Social Security Act, which was added by section 3401(f) of the Patient Protection and Affordable Care Act (Pub. L. 111-148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152).

Executive Order No. 12,866 (Regulatory Planning and Review)

CMS determined that the final rule is economically significant under Executive Order 12,866, and the final rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS determined that the final rule would not have a substantial effect on state or local governments.